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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
SPOKANE DIVISION

LONNIE TOFSRUD, an individual,

Plaintiff,

vs.

SPOKANE POLICE DEPARTMENT, a political division of City of Spokane, CRAIG MEIDL, in his personal and official capacity, JUSTIN LUNDGREN, in his personal and official capacity, and DAVE STABEN, in his personal and official capacity,

Defendants.

Case No. 2:19-cv-00371

**COMPLAINT FOR DAMAGES**

Violations of 42 U.S.C. § 1983, 14<sup>th</sup> Amendment Due Process, Equal Protection, 1<sup>st</sup> Amendment Retaliation, Outrage, and Defamation

42 U.S.C. § 1983, supplemental state common law claims

Damages at least \$2,000,000 or an amount to be proven at trial

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff Lonnie Tofsrud (“Plaintiff”), by and through his attorneys, Thenell Law Group, P.C., brings this Complaint herein and states and alleges as follows:

## **INTRODUCTORY STATEMENT**

1. This action is filed by Plaintiff under 42 USC § 1983 and it seeks monetary damages and injunctive relief for violations of the Plaintiff's Fourteenth Amendment due process and equal protection, unlawful retaliation for First Amendment free speech, and state law claims of outrage, and defamation by Defendants Spokane Police Department, Chief Craig Meidl, Assistant-Chief Justin Lundgren, and Lieutenant Dave Staben.
2. Defendants, except as noted herein, at all times material were acting in their official capacities. Defendants, acting under color of law, have deprived Plaintiff of due process and equal protection of law, retaliation for exercise of free speech, and injured Plaintiff under state law by retaliating against Plaintiff's exercise of free speech on a matter of public concern, by depriving Plaintiff of property interests without due process, by treating Plaintiff differently than similarly situated persons without rational basis, by defaming Plaintiff and committing outrage upon him and by conspiring with each other in furtherance of the above violations.

## **JURISDICTION AND VENUE**

3. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction, 28 U.S.C. § 1333, civil rights jurisdiction, for violations of the

1 Constitution, as actionable under 42 U.S.C. § 1983. Specifically, Plaintiff alleges  
2 that Defendants have violated and continues to violate his rights to procedural due  
3 process and equal protection under the Fourteenth Amendment to the United  
4 States Constitution and his liberty and association interests under the First  
5 Amendment.

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7 4. Venue is proper under 28 U.S.C. § 1331(b), as Defendants reside in the Eastern  
8 District of Washington and Plaintiff's claims for relief arose in this district.

9

10 **PARTIES**

11 5. Plaintiff is a resident of Spokane County, Washington, and is employed by the  
12 Spokane Police Department ("SPD"), a department within the City of Spokane  
13 (the "City").

14

15 6. The SPD is a public body liable for the tortious conduct of its agents and  
16 employees pursuant to RCW 4.96.020. The SPD is sued for damages.

17

18 7. Craig Meidl ("Meidl" or "Chief Meidl") is the Chief of Police for the SPD.  
19 Defendant Meidl represents SPD in his capacity as its Chief. Defendant Meidl is  
20 the final policy maker for SPD with regard to all matters related to the Plaintiff's  
21 employment. Defendant Meidl is sued herein in his official capacity and as an  
22 individual.

23

24 8. Justin Lundgren ("Lundgren" or "Assistant Chief Lundgren") is the Assistant

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1 Chief of Police for the SPD. Defendant Lundgren is sued herein in his official  
2 capacity and as an individual.  
3

4 9. Dave Staben (“Staben”) is a Lieutenant in the SPD. Defendant Staben is sued  
5 herein in his official capacity and as an individual.  
6

## **FACTUAL BACKGROUND**

7 10. Plaintiff has been a valued employee of the Spokane Police Department for the  
8 past 28 years. Plaintiff was promoted to the rank of Detective in 1999. Plaintiff’s  
9 abilities and work ethic are memorialized in performance reviews,  
10 accommodations as well opinions submitted in the form of written and verbal  
11 commendations. Plaintiff was assigned to the Targeted Crimes Unit (TCU) in  
12 approximately 2003. Plaintiff left the TCU for approximately three years before  
13 returning to the TCU in 2009 where he has worked until the events described  
14 herein.  
15

16 11. The Major Crimes unit of the Spokane Police Department is charged with  
17 investigating serious felonies including, but not limited to, homicides, serious  
18 assaults, and robberies. The detectives assigned to this unit are also responsible  
19 for the investigation of critical events involving police officers. This is a coveted  
20 position within the investigative division and offers many incentives including,  
21 but not limited to, training, overtime opportunities, and equipment. Plaintiff was  
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1 actively recruited to join Major Crimes prior to the events described herein. Once  
2 the Defendants initiated the retaliatory investigations into the Plaintiff, as  
3 described herein, the Plaintiff was no longer considered for any of the several open  
4 positions in the Major Crimes unit.

5  
6 12. The Targeted Crimes Unit has had a longstanding working relationship with the  
7 ATF. The two entities have engaged in several joint criminal investigations both  
8 in the state and federal arena. Plaintiff has been identified as the informal leader  
9 of TCU as well as an informal task force officer. There has been a memo of  
10 understanding wherein the ATF would reimburse the SPD for overtime incurred  
11 by detectives working with the ATF. This relationship was also memorialized in  
12 an email from Staben. Plaintiff had been the lead investigator in a vast majority  
13 of the joint investigations with the ATF.

14  
15 13. In 2016 Plaintiff and ATF Special Agent Julius began utilizing a specific  
16 confidential informant (the CI) to facilitate criminal investigations related to the  
17 trafficking of firearms and narcotics. The two initiated several investigations that  
18 led to the arrest and convictions of many people involved in criminal activity in  
19 and around the greater Spokane area. Subjects were often career offenders with  
20 criminal histories including violent offenses. The obvious primary effect of the  
21 investigations was the eventual incarceration of people involved in a wide array  
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1 of criminal law violations, not just the firearms violations. A secondary effect  
2 was the disruption of criminal groups.  
3

4 14. Joint efforts between TCU and ATF were designed to disrupt and address the flow  
5 of firearms into the hands of career offenders. Cases decided by the Supreme  
6 Court, including *Arizona v Gant* (2009), limited the ability for patrol officers to  
7 search vehicles incident to arrest. The TCU/ATF task force was utilizing CIs to  
8 perform controlled buys to both facilitate seizure of the illegal firearms as well as  
9 arrest the serial offenders responsible for the flow of weapons.  
10

11 15. On November 6, 2017, SPD officers Corporal McCullough and Sergeant Vigessa  
12 contacted and arrested Tofsrud's and Julius's CI. The CI was charged and was  
13 being held in custody. Sergeant Vigessa contacted Plaintiff and made him aware  
14 of the arrest. Plaintiff later reviewed the written arrest report and accompanying  
15 documents. Plaintiff was familiar with the work of both McCullough and Vigessa  
16 in past incidents and made certain to review the unit history and the official reports  
17 filed by McCullough and Vigessa in this incident. Plaintiff noted discrepancies  
18 between the official report and the notes McCullough had entered in the unit  
19 history or CAD.  
20

21 16. On December 27, 2017, Plaintiff called McCullough, urging him to address the  
22 discrepancies. Plaintiff was concerned that these discrepancies would cause  
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1 problems for the prosecutor's office due to *Brady* disclosure implications.  
2 Specifically, the CAD or unit history is a discoverable document and any criminal  
3 defense attorney would immediately note the facts and details present in the unit  
4 history or CAD report which were absent or modified in the official police report  
5 of the arrest. Plaintiff advised McCullough that he would be contacting the  
6 prosecutor's office the following day for guidance. By contacting McCullough  
7 directly, Plaintiff was attempting to address the matter at the lowest possible level  
8 without escalation.

11 17. On December 28, 2017, Plaintiff contacted Eugene Cruz, a prosecutor at the  
12 Spokane County Prosecutor's Office. Plaintiff discussed the discrepancies in  
13 McCullough's report and provided Cruz with the report and the CAD notes or unit  
14 history notes. The document provided by Plaintiff came directly from  
15 McCullough, were his authorship, or his unit history.

18 18. Cruz communicated Plaintiff's concerns to Jack Driscoll ("Driscoll"), the chief  
19 criminal prosecutor at that time, and Mark Cipolla ("Cipolla"). The prosecutor's  
20 office decided to dismiss the case against the CI arrested by McCullough and  
21 Vigessa. Driscoll also contacted Lieutenant Stevens who oversaw the SPD  
22 internal affairs unit regarding possible misconduct by McCullough. It was the  
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1 policy of the SCPO to refer allegations of officer misconduct to the internal  
2 investigations unit in the subject agency.  
3

4 19.Instead of promptly opening an investigation into McCullough, Stevens contacted  
5 Lt. Staben, who was McCullough's and Plaintiff's superior officer. Staben took  
6 the case over from Stevens. Staben opened two internal affairs investigations, one  
7 into Plaintiff ("Tofsrud IA") and a pretextual investigation into McCullough  
8 ("McCullough IA"). Plaintiff believes the McCullough IA was pretextual because  
9 of the numbers assigned to the two IAs. The policy pattern and practice of the  
10 SPD is to number each IA when it is opened in a sequential fashion with a prefix  
11 designating the year, e.g. yy-xxx. Here the IA number associated with the  
12 McCullough IA was 18-003 while the IA number associated with the Tofsrud IA  
13 was 18-002. Later both IAs were merged into 18-002 to obscure the fact that  
14 Staben opened the first investigation into Tofsrud, who had reported potential  
15 misconduct.  
16

17 20.The Assignment History associated with IA 18-002 notes Stevens assigned the  
18 incident to Staben on January 15, 2018. Staben attached McCullough's unit  
19 history and officer reports that same day. Also, on January 15, 2018, Staben added  
20 Tofsrud to the IA as well as his Sergeant Preuniger, Plaintiff's sergeant, who was  
21 investigated for allowing Plaintiff to take his complaint to Cruz outside the chain  
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1 of command. McCullough was not added to IA 18-002 until February 8, 2018, on  
2 or about the time McCullough's IA was merged into Tofsrud's. Staben initially  
3 attempted to interview Plaintiff on January 16, 2018, telling him he was merely a  
4 witness in an IA into McCullough. Staben refused to allow Plaintiff to bring a  
5 legal representative with him, again telling him he was merely a witness. Staben  
6 further told Plaintiff the interview must happen that day to accommodate the  
7 attendance of the ombudsman, Bart Logue. Plaintiff was suspicious of this request  
8 because it was the policy of the SPD to include the ombudsman only for  
9 investigations which originated by citizen complaint, not internally. Plaintiff  
10 declined to be interviewed on that day.

14 21. Staben interviewed Detective James Erickson on January 16, 2018. Erickson  
15 worked with Plaintiff in the TCU. Staben used deceptive interrogation techniques  
16 to elicit a statement from Erickson that Plaintiff used the word "lie" or "lied" when  
17 reporting the discrepancies to Cruz. This is contrary to the nature of the referral  
18 Plaintiff made but became the basis for the allegations which Defendants  
19 conspired to sustain against Plaintiff. Police Guild Vice President Kris Honacker  
20 was present for Erickson's interview. Upon learning of the Erickson interview and  
21 Staben's focus on Plaintiff, Plaintiff also elicited the support of the union and  
22 Honacker.

1 22. Plaintiff and Honacker met with Assistant Chief Lundgren. Plaintiff and Honacker  
2 apprised Lundgren of the chain of events and Lundgren opined the investigation  
3 should not have been opened by Staben at the shift level due to the obvious *Brady*  
4 Implications. Lundgren relieved Staben of the investigation and it was transferred  
5 back to Stevens on January 17, 2018; it was then assigned to Sergeant Michael  
6 Carr and Sergeant Daniel Waters who handled the bulk of the investigation. It was  
7 Carr who later informed Plaintiff that the two IAs had been merged into one.  
8

9 23. Despite being relieved of the investigation, Staben continued to insert himself in  
10 the investigation process. This interference continued throughout the entire  
11 process of the investigation, analysis, ultimate finding and grievance to reconsider  
12 the findings. Even if he did not engage in this improper interference, Staben had  
13 already tainted the focus of the investigation by turning it towards the Plaintiff,  
14 who reported the potential misconduct, and away from McCullough, the potential  
15 malfeasant.  
16

17 24. Plaintiff also brought his concerns over the handling of the IAs and Staben  
18 treatment of Plaintiff to the City's HR department. Plaintiff and Honacker had a  
19 discussion with Jennifer Jackson of human resources. Jackson was given the same  
20 information as Lundgren. She was also made aware of inappropriate behavior  
21 exhibited by Lieutenant Staben.  
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1 25.On March 22, 2018, Sergeant Carr interviewed Plaintiff. Plaintiff was read his  
2 administrative rights, which included in part, that Plaintiff was being compelled  
3 to answer questions truthfully and honestly. Plaintiff at all times answered  
4 questions truthfully.

5 26.In May of 2018, an administrative review panel concluded that Plaintiff had  
6 violated several policies. The most damning being SPD Policy 340.3.5 (f)  
7 “Knowingly making false, misleading or malicious statements that are reasonably  
8 calculated to harm or destroy the reputation, authority or official standing of the  
9 Department or members thereof.” The statements alleged to be false were  
10 Plaintiff’s allegation against McCullough and Vigessa. None of Plaintiff’s  
11 allegations were proven false. McCullough’s report did in fact contain  
12 inconsistencies and the other officers involved in the arrest did in fact make  
13 statements which conflicted with the evidence. None of the statements Plaintiff  
14 made prior to, or during the IA, were proven to be false.

15 27.On June 22, 2018, Chief Meidl authored a letter of reprimand outlining the policy  
16 violations committed by Plaintiff. The letter noted additional statements made by  
17 Plaintiff. The letter was presented to Plaintiff by Major Eric Olson. During that  
18 conversation, Olson indicated that he had requested a portion of the letter be  
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1 changed in an effort to lessen the chances that Plaintiff would be implicated by  
2 the *Brady v Maryland* requirements of the prosecutor's office.  
3

4 28. On July 24, 2018, Plaintiff submitted a letter of rebuttal addressing the IA  
5 investigation, the analysis, the eventual finding of the administrative review panel,  
6 and the subsequent letter of reprimand. Plaintiff enlisted the assistance of his  
7 attorney, Christian Phelps, in preparing that document. The document gave a clear  
8 and concise explanation of the chain of events. Plaintiff had provided a list of  
9 witnesses who could elucidate the matter further; none of those witnesses were  
10 interviewed during the course of this investigation, nor were they interviewed  
11 after the rebuttal. Plaintiff did not receive any response from the Chief's office  
12 other than an email indicating that the letter had been received and then it would  
13 be read.  
14

15 29. On September 21, 2018, the Spokane Police Guild president, John Griffin,  
16 submitted a letter to Chief Meidl asking him to reconsider the letter of reprimand  
17 as issued to Plaintiff. Griffin also met with members of the administrative review  
18 panel and plead the case. The chief declined to reconsider the letter and its  
19 language. This step exhausted Plaintiff's administrative options to address this  
20 miscarriage of justice.  
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1 30. Contemporaneously with the events described herein, Chief Meidl presented a  
2 document to members of the Spokane Police Department. The document was  
3 entitled "Highlights of the collaborative reform process in the Spokane Police  
4 Department". Chief Meidl worked with community stakeholders on this  
5 document, including a prominent citizen of color named James Wilbourn. Mr.  
6 Wilbourn was quoted in the document as saying "In order to gain trust with the  
7 community, the community wants to be sure that officers will report misconduct  
8 by other officers. Failure of officers to hold their peers who engage in misconduct  
9 accountable soils the reputation of all officers". This was precisely the ethic that  
10 Plaintiff attempted to adhere to by reporting the factual discrepancy in  
11 McCullough's report.

15 31. On August 29, 2018 Plaintiff was contacted by two of his peers who told him chief  
16 criminal deputy Cipolla had been publicly stating that Plaintiff would be identified  
17 as a *Brady* officer. On August 30, 2018, Plaintiff was contacted directly by  
18 Cipolla, who requested a meeting. Honaker accompanied Plaintiff to Cipolla's  
19 office. Plaintiff was served with a potential impeachment disclosure ("PID")  
20 letter. During the conversation, Cipolla indicated that the letter was the sole result  
21 of the finding by chief Meidl. Cipolla also indicated that he felt the investigation  
22 was agenda driven and poorly executed. Cipolla had previously told Plaintiff and  
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1 other witnesses that a member of the Spokane Police Department administration  
2 had contacted the prosecutor's office in an effort to secure the decision to  
3 designate Plaintiff as a *Brady* officer. Cipolla refused to elaborate on that issue in  
4 front of Honaker. Plaintiff believes the SPD Defendants conspired to create a  
5 *Brady* issue related to Plaintiff. Plaintiff further believes Cipolla was aware of this  
6 conspiracy and nevertheless issued the PID letter.

7  
8 32. Plaintiff's attorney, Mr. Phelps, attempted to intervene with the elected  
9 prosecutor, Larry Haskell. Phelps was unable to get Haskell to reverse his office's  
10 decision to designate Plaintiff a *Brady* officer despite evidence the office had acted  
11 in violation of their own written policy guidelines.

12  
13 33. On May 4, 2018, Plaintiff filed a discrimination/harassment complaint with  
14 Spokane City human resources. The complaint outlined specific behavior  
15 demonstrated by Lieutenant Staben. During the pendency of the complaint being  
16 investigated Plaintiff was warned by his chain of command about contacting  
17 possible witnesses that could substantiate his allegations. Plaintiff is unaware of  
18 any policy that prohibits a victim of discrimination/harassment from identifying  
19 possible witnesses and having contact with them. Plaintiff believes this direction  
20 is further evidence of retaliation and prevented many helpful witnesses from  
21 coming forward on Plaintiff's behalf.

1 34. Plaintiff was advised the human resources complaint would not be investigated  
2 until after the IA had been completed. Plaintiff was told this would help protect  
3 the integrity of the IA. Plaintiff has cause to believe the investigations were not  
4 kept separate and were used to accomplish the same unlawful purpose, that being  
5 to punish Plaintiff for his reporting of potential misconduct while protecting the  
6 City, the SPD and the individual defendants.  
7  
8

9 35. During the pendency of the HR complaint, Lieutenant Staben made contact with  
10 a subordinate (Tom Michaud) and discussed the complaint with him. Michaud  
11 was so concerned about this discussion that he reported it to human resources.  
12

13 36. Carr confronted Plaintiff during Plaintiff's shift regarding the HR complaint. Carr  
14 also admitted to other violations of IA policy by disclosing details of the  
15 investigation to others. Carr and Staben were familiar with IA policies and knew  
16 or should have known their actions violated those policies. Following this  
17 confrontation with Carr, Plaintiff became concerned and contacted Jennifer  
18 Jackson and Christine Kavanaugh of human resources to ask for specific  
19 protections.  
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22 37. On November 20, 2018, Jennifer Jackson submitted a final report regarding the  
23 human resources complaint initiated by Plaintiff. The report was lacking crucial  
24 information and appeared to be a complaint and investigation of Plaintiff. The  
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1 report contained witness statements solicited by Jackson and Jacqui MacConnell  
 2 director of SPD internal affairs. The witnesses appear to have been curated to  
 3 protect Chief Meidl, Lt. Staben, and other members of the SPD executive staff.  
 4  
 5 The report did not include any witness interviews with Plaintiff's peers or  
 6 coworkers. Plaintiff and his attorneys submitted a response to the report pointing  
 7 out the obvious inadequacies of the investigation and those conducting it. There  
 8 have been no attempts to rectify the clear mistakes made by the investigators.

10 38. The City's HR department eventually issued a report that largely found in favor  
 11 of Staben and against Plaintiff. The report did find Staben lacked in emotional  
 12 intelligence and recommended training on emotional maturity. Plaintiff has reason  
 13 to believe that Staben was never required to undergo any training as a result of the  
 14 HR findings.

17 39. Despite the fact that it was the malfeasance of McCullough and the SPD senior  
 18 staff that led to Plaintiff's report, Cpl. McCullough has been identified as a  
 19 "victim" of the Plaintiff in a memo from Staben. The evidence clearly showed  
 20 McCullough had sufficient discrepancies in his report to warrant a PID letter;  
 21 however, it was Plaintiff who was issued the PID letter in response to his reports  
 22 of the misconduct and removed from his position. McCullough, although also  
 23 issued a PID letter, has been allowed to continue working specialty positions that

1 provide augmented work hours, overtime opportunities and career advancement.  
2  
3 Despite Plaintiff's allegations and the findings of the HR report, Staben continues  
4 to operate in a supervisory role with no negative repercussions. Plaintiff has been  
5 assigned to a precinct with limited/restricted duties and virtually no opportunities  
6 for overtime. Plaintiff has been foreclosed from nearly every opportunity for  
7 career advancement. Plaintiff has also been prevented from working with the  
8 ATF. Plaintiff is being treated unequally from McCullough with no rational basis  
9 to support the difference.

10  
11 40. The mishandling of the internal investigations and the human resources  
12 investigation, the persistent interference by Staben and others, and the unequal  
13 treatment of Plaintiff have all caused extreme stress and destroyed an otherwise  
14 good working relationship between Plaintiff and many, if not all, of his former  
15 coworkers. The retaliatory interference by the police administration in the HR  
16 investigation and with the prosecutor's office have caused Plaintiff to be denied  
17 opportunities for advancement and all of the above have contributed to Plaintiff's  
18 health issues. These stressors as well as unrelated health problems resulted in  
19 Plaintiff taking a medical leave for approximately eleven months.

20  
21 41. After returning from leave, Plaintiff was transferred to the North Precinct and was  
22 told that his duties would include screening cases, distributing stickers for the scat

1 program and conducting background investigations for perspective senior  
2 volunteers at the precinct. Plaintiff was also assigned an office in the reception  
3 area of the precinct. The office was located in area where DOC offenders would  
4 report to their probation officers. The office was previously occupied by a patrol  
5 officer that had been identified as a Brady officer. That officer had retired just  
6 prior to Plaintiff returning to duty. The office was across a narrow hallway from  
7 a room where the DOC offenders would supply urine samples. This placement  
8 was clearly retaliatory. After discussion with his Sergeant and Lieutenant, it was  
9 decided that Plaintiff would share an office with his former partner, Detective  
10 Thieschafer.

14 42. On August 14, 2019, Plaintiff was directed to report to the Academy for remedial  
15 training. There had been an email between Captain Griffiths and Lieutenant  
16 McNabb outlining a policy that stated when an employee is gone on leave for  
17 more than 6 months, that employee must report to the Academy for training. The  
18 training is supposed to be designed to specifically address the employee's new  
19 duty assignment. The training given to Plaintiff was limited to qualifying on a  
20 PPC course with a handgun and reading policy. The training had no relative  
21 connection to Plaintiff's new assignment.

25 / / /  
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## CLAIMS FOR RELIEF

## **FIRST CLAIM FOR RELIEF**

## **42 USC § 1983 – Fourteenth Amendment**

## **Count One: Violation of Plaintiff's Procedural**

## **and Substantive Due Process Rights**

**(All Defendants)**

43. Plaintiff re-alleges all paragraphs previously alleged.

44. By and through the actions and omissions described above, Defendants deprived, and conspired with one another to deprive Plaintiff of his Fourteenth Amendment rights preventing deprivation of his constitutionally protected rights without due process of law, causing him harm.

45. Except as otherwise alleged herein, all Defendants acted under color of law at all times material.

46. Plaintiff has a property interest in his job, as he has a legitimate entitlement to continued employment with his public employer, as well as fair and equal access to overtime and promotional and training opportunities. This claim to entitlement arises out of the SPD's promises of specific treatment in specific circumstances, including disciplinary action implemented upon existence of just cause, made in

1 City and Department disciplinary policies, the *Brady* best practice policy and the  
2 collective bargaining agreement.  
3

47. Defendants failed to provide adequate notice and opportunity to be heard  
5 regarding his termination and his *Brady* listing. The listing effectively blacklisted  
6 Plaintiff and continues to affect him to this day. The investigation against Plaintiff  
7 was so flawed that it deprived him of due process.  
8

48. Defendants then deprived Plaintiff of his constitutionally protected interests  
10 without due process of law when they forced him out of the TCU, deprived him  
11 of overtime pay (an “economic sanction”), drastically changed his work duties  
12 and shift assignments, curtailing or eliminating training opportunities, and  
13 effectively ended his employability as a police officer and his ability to transfer  
14 laterally to a different department, thereby directly impacting his interest in  
15 pursuing law enforcement as a profession elsewhere. Defendants continue to  
16 deprive Plaintiff of these interests without due process to this day.  
17

49. As a direct and proximate result of the acts and omissions of Defendants  
20 complained of herein, Plaintiff has suffered, and continues to suffer, economic  
21 damages including lost overtime work, lost training and promotion opportunities,  
22 advancement, and disqualification from testifying in the course of his  
23

1 employment. Such injuries are permanent and continuing, and capable of being  
2 determined at trial.  
3

4 50. As a further direct and proximate result of the acts and omissions complained of  
5 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,  
6 humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal  
7 and professional reputation, entitling him to an award of compensatory non-  
8 economic damages in an amount to be determined at trial.  
9

10 51. Plaintiff seeks injunctive and declaratory relief in the form of an order that he be  
11 immediately reinstated in his prior position with full pay and that he be  
12 immediately removed from the *Brady* list. Plaintiff also seeks compensatory  
13 damages against Defendants including any unpaid back-pay, overtime pay, as well  
14 as compensatory damages for pain and suffering including mental anguish, loss  
15 of self-esteem, dignity and standing in the community.  
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18 52. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is  
19 entitled to attorney fees, expert witness costs, litigation costs, and prejudgment  
20 interest.  
21

22 **Count Two: Violation of Plaintiff's Right to Equal Protection**  
23

24 (All Defendants)

25 53. Plaintiff re-alleges all paragraphs previously alleged.  
26

1 54. SPD has a policy prohibiting untruthfulness in the performance of official duties.

2 Plaintiff was investigated and wrongfully punished for an alleged violation of this  
 3 policy. The basis for this punishment was the investigation and report completed  
 4 by the SPD and ratified by Lundgren and Meidl.

5 55. McCullough's inaccurate report was not fully investigated, but Plaintiff has cause  
 6 to believe the report and CAD unit history taken together, constitute dishonesty  
 7 under the SPD policy. Furthermore, Plaintiff has reason to believe McCullough  
 8 was dishonest in his statements during the investigation. Finally, Plaintiff has  
 9 reason to believe if the investigation into McCullough were properly carried out,  
 10 McCullough would have been found to have been dishonest.

11 56. On information and belief, McCullough has not been investigated or punished for  
 12 his dishonesty. McCullough has not been subject to any employer discipline, nor  
 13 has he been reported to SCPO for untruthfulness, nor has he been included on the  
 14 *Brady* list of dishonest law enforcement officers.

15 57. Plaintiff was subjected to unequal treatment to McCullough without rational basis.

16 58. The Defendants actions violated the Equal Protection Clause of the Fourteenth  
 17 Amendment.

18 59. As a further direct and proximate result of the acts and omissions complained of  
 19 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,

humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal and professional reputation, entitling him to an award of compensatory non-economic damages in an amount to be determined at trial.

60. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is entitled to attorney fees, expert witness costs, litigation costs, and prejudgment interest.

## SECOND CLAIM FOR RELIEF

## **42 USC § 1983 – First Amendment**

## **Violation of Right to Free Speech – Public Employee**

**(All Defendants)**

61. Plaintiff re-alleges all paragraphs previously alleged.

62. Plaintiff's referral of McCullough's potential misconduct was protected under the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the Constitution.

63. Police misconduct, particularly dishonesty, is a matter of public concern.

64. Plaintiff's acts described herein were the sole motivating factors for one or more of the following retaliatory actions: the referral of Plaintiff to IA for investigation, the Defendants making Plaintiff the center of the IA investigations, the merging of the IA investigations, the referral to the SCPO for impeachment disclosure, the removal of work assignments and opportunities, the manner in which the IA was

1 conducted, the manner in which the HR investigation was conducted, the selective  
2 nature of the witnesses called for both the IA and the HR investigations, the  
3 imposition of discipline on Plaintiff, the inclusion of Plaintiff on the *Brady* list,  
4 the refusal to adjust the discipline by the SPD, and the refusal to remove Plaintiff  
5 from the PID.

6  
7 65.Except as otherwise noted herein all Defendants were acting under color of law  
8 and in their official capacities at all times material.

9  
10 66.There was no independent justification for the retaliatory acts taken by Defendants  
11 against Plaintiff.

12  
13 67.As a result of the above-described actions, Plaintiff has suffered damages totaling  
14 at least \$2 million, including lost wages and benefits, lost economic potential,  
15 harm to reputation, emotional distress, and incurrence of attorney fees and other  
16 costs.

17  
18 68.Plastic has incurred attorney's fee and costs in pursuing this claim.

19  
20 **THIRD CLAIM FOR RELIEF**

21  
22 **Outrage**

23  
24 **(All Defendants)**

25  
26 69.Plastic re-alleges all paragraphs previously alleged.

70.The Defendants' actions alleged herein were extreme and outrageous conduct.

1 71.The Defendants acted intentionally or recklessly in a manner that caused Plaintiff  
2 severe emotional distress.  
3

4 72.The Defendants' acts of investigating and labeling a law enforcement officer as a  
5 liar, despite clear evidence collectively consists of an extraordinary transgression  
6 of the bounds of socially tolerable conduct that is extreme and outrageous. The  
7 application of the label "liar" in an ordinary social context is severely damaging  
8 to any private member of the community. To so label, publicly, a law enforcement  
9 officer is outrageous in the extreme. Law enforcement officers are expected to  
10 perform a highly dangerous and stressful job and are held to high standards of  
11 honesty. All the credible evidence here would indicate that Plaintiff met or  
12 exceeded that high standard. The application of the label "liar" and the continued  
13 and intentional refusal to remedy the situation, has caused severe mental and  
14 emotional anguish.  
15

16 73.Plastic seeks injunctive and declaratory relief in the form of an order that he be  
17 immediately removed from the *Brady* list. Plaintiff further seeks an order that the  
18 Defendants shall contact all parties in receipt of information regarding his  
19 inclusion on the *Brady* list and inform them that he was never to have been  
20 included in the first place. Plaintiff also seeks compensatory damages in an  
21 amount to be proven at trial for the infliction of severe mental and emotional  
22  
23  
24  
25  
26

1 trauma. Plaintiff further prays for an order awarding punitive damages due to the  
2 particularly aggravated disregard of the Plaintiff's rights.  
3

4 **FOURTH CLAIM FOR RELIEF**

5 **Defamation**

6 **(All Defendants)**

7 74. Plaintiff re-alleges all previously alleged paragraphs.  
8

9 75. Defendants made statements in the form of the IA investigation, memos and  
10 reports, letters, emails, and public comments in which they labeled Plaintiff as  
11 untruthful.  
12

13 76. These statements were untrue, defamatory, intended to subject Plaintiff to ridicule,  
14 and diminish the respect and confidence in which Plaintiff is held by his employer,  
15 the City, and the public. These statements have the potential to cause damage to  
16 Plaintiff's profession up to, and including, termination and revocation of his law  
17 enforcement certification.  
18

19 77. Moreover, Plaintiff's inclusion on the *Brady* list means that the false statement  
20 labeling him as untruthful has been published to every defense attorney who had  
21 a case in the county involving Plaintiff. This has already caused Plaintiff to be  
22 named as a defendant in one tort claim filed with the City and County of Spokane.  
23

24 78. Defendants knew the statements were false and acted maliciously or recklessly,  
25  
26

1 or in bad faith.

2 79. Defendants' statements were defamatory *per se*. As a direct and proximate result  
3 of Defendant's defamatory statements, Plaintiff has suffered economic and non-  
4 economic damages.

5 **REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiff requests judgment in favor of Plaintiff and against  
7 Defendants, as follows:

8 1. On each and every one of Plaintiff's claims against Defendants, for economic  
9 damages in a sum to be determined at the time of trial;

10 2. On each and every one of Plaintiff's claims against Defendants, for non-  
11 economic damages in a sum to be determined at the time of trial;

12 3. A judicial declaration that Defendants' actions violated Plaintiff's  
13 constitutional rights, as alleged above;

14 4. A mandatory injunction ordering Defendants to remove Plaintiff from the  
15 *Brady* List, taking such steps as are reasonably necessary to remedy the  
16 ongoing economic harm;

17 5. A mandatory injunction ordering Defendants to reinstate Plaintiff in his  
18 position prior to discipline;

6. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law;
7. An award of pre-judgment interest on all liquidated amounts awarded;
8. An award of post-judgment interest from the date of judgment to the date of payment of that judgment amount;
9. A post-trial award of an amount sufficient to offset any adverse tax consequences resulting from payment of the judgment;
10. Punitive damages for the aggravated defamation and outrageous conduct causing severe emotional distress; and
11. Any other legal or equitable relief this court deems just and proper. DATED this October 29, 2019.

## THENELL LAW GROUP, P.C.

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